

## **FINAL STATEMENT OF REASONS**

The California Department of Corrections and Rehabilitation (CDCR) proposes to adopt under Subchapter 6 of the California Code of Regulations (CCR), Title 15, Division 3, new Article 21 and sections 3800, 3800.1, 3800.2, and 3800.3 concerning the Residential Aftercare Program.

In 2006 the Legislature passed and the Governor signed into law Senate Bill (SB) 1453 (Senator Speier), which added section 2933.4 to the Penal Code. This law requires the California Department of Corrections and Rehabilitation (CDCR) to allow any inmate under the custody of CDCR who is not currently serving and has not served a prior indeterminate sentence or sentence for a violent felony, a serious felony, or a crime that requires him or her to register as a sex offender pursuant to PC Section 290, who has successfully completed an in-prison substance abuse program, upon release from state prison, whenever possible, to be entered into a 150-day community-based residential aftercare drug treatment program sanctioned by the CDCR. As a condition of parole, if the inmate successfully completes 150 days of residential aftercare treatment, as determined by the CDCR and the aftercare provider, the parolee shall be discharged from parole supervision at that time. In 2009, Special Legislation, SBX3-18, which became effective January 25, 2010, renumbered PC Section 2933.4 to PC Section 3050.

These regulations are necessary to implement and make specific the provisions of PC Section 3050. This regulatory action provides authority and direction for the identification of inmates who fit the criteria to participate in the Residential Aftercare Program, makes specific the criteria by which a parolee will be determined to have successfully completed the program, and ensures the parolee is discharged from parole upon successful completion of the program, in accordance with PC Section 3050.

Due to the fact that there are multiple residential treatment programs administered by the CDCR, this program shall be known as the Treatment Incentive Program (TIP) to avoid confusion with other programs.

### **SPECIFIC PURPOSE OF EACH SECTION PER GOVERNMENT CODE 11346.2(b)(1)**

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed is as follows:

**New Article 21 titled PC 3050 Residential Aftercare Program is adopted.**

**Under Article 21, new Sections 3800, 3800.1, 3800.2 and 3800.3 are adopted.**

#### **Section 3800. General Policy**

**Section 3800** provides the general policy of the Residential Aftercare Program. This is necessary to establish the program and clarify to both staff and inmates the intent of the program and the basis for its authority. Additional language also specifies that this program shall be known as the Treatment Incentive Program (TIP) in order to differentiate it from other residential treatment programs.

### **3800.1. Treatment Incentive Program Eligibility Criteria.**

**Subsection 3800.1(a)** establishes program eligibility criteria. This is necessary to make specific the criteria CDCR will use to screen inmates for entrance into the Treatment Incentive Program (TIP). The subsection establishes that participation in the program is voluntary, specifies the offenses that will prevent participation, and requires inmates to have completed an in-prison Substance Abuse Program (SAP), in accordance with PC 3050.

In addition, new text specifies that in order to participate in the program the inmate must not be eligible to participate in non-revocable parole status. Currently, Subsection 3505(b) specifies that the Department is not required to provide services or programs for parolees on non-revocable parole.

This subsection also provides applicable Penal Code references where terms such as violent and serious felony, sex offenders and non-revocable parole are clearly defined.

The CDC Form 128-B (Rev. 04/74), General Chrono, is referenced as a form used. The CDC Form 128-B is already established in Title 15, Division 3 regulations. Therefore, no copy has been made available for public review.

**Subsection 3800.1(b)** specifies that the Successful Completion Assessment Team (SCAT) will determine successful completion of the in-prison SAP. This is necessary to establish a process to determine that an inmate has met the completion requirement for participation in the TIP. The subsection also establishes the mandatory membership of the SCAT. This is necessary to ensure consistent membership with minimal variation of the team members. The subsection specifies the four criteria the SCAT will use to determine successful completion of an in-prison SAP. This is necessary to clearly define the criteria used and to ensure consistency in the process of determining eligibility.

### **Section 3800.2. Treatment Incentive Program Exclusionary Criteria.**

**Subsection 3800.2 (a)** establishes criteria that will exclude inmates from participation in the TIP.

Inmates are prohibited from program participation if they are currently in parole violator/return to custody status. This provision is necessary because a parole violator has already incurred an interruption of his/her term of parole and is therefore not eligible to discharge after 150 days.

Inmates convicted of specified domestic violence-related offenses after January 1, 1997 are ineligible for the program. This is necessary because these inmates are required to complete a 52-week Batterer's Program per PC Section 3053.2, and therefore could not be discharged from parole after 150 days.

Inmates who are serving a Civil Addict commitment are ineligible. This provision is necessary because a Civil Addict sentence is an indeterminate sentence. Inmates who are serving or have served indeterminate sentences are ineligible per PC 3050.

**Subsection 3800.2 (b)** establishes the existing Inmate Appeals Process as the process to be used by an inmate in the event they are denied entry into the TIP. This is necessary to establish an appeal process and ensure inmates are aware of their right to appeal.

### **Section 3800.3. 150-Day Residential Aftercare Program.**

**Subsection 3800.3(a)** specifies that eligible inmates, upon release to parole and volunteering to participate in the program, shall be placed into a CDCR sanctioned residential aftercare program. This is necessary to ensure inmates are placed in accordance with PC 3050.

**Subsection 3800.3(b)** specifies that upon successful completion of the residential aftercare program, the parolee shall be discharged from parole at 5 p.m. on the 150<sup>th</sup> day of their participation in the program. This is necessary to make specific the time and day of discharge from parole, pursuant to PC 3050.

**Subsection 3800.3(b)(1)** specifies that the Aftercare Successful Completion Assessment Team (ASCAT) will determine successful completion of the residential aftercare program. This is necessary to establish a process to determine that the parolee has successfully completed the program. The subsection also establishes the mandatory membership of the ASCAT. This is necessary to ensure consistent membership with minimal variation of the team members.

**Subsection 3800.3(b)(2)** specifies the time period during which the ASCAT shall conduct a case review to determine whether the parolee has completed the program successfully. This is necessary to allow reasonable time for review and processing of required documentation prior to the parolee's 150<sup>th</sup> day in the program. The subsection specifies that the four criteria used to determine successful completion of an in-prison SAP, as outlined in subsection 3800.1(b), will also be used by the ASCAT to determine successful completion of the residential aftercare program. This is necessary to clearly define the criteria used and to ensure consistency in the process of determining successful completion.

**Subsections 3800.3(b)(3), 3800.3(b)(4) and 3800.3(b)(5)** make specific the review and documentation process following a determination of successful completion of the program. This documentation includes a copy of the Certificate of Completion provided to the parolee by the treatment provider. This is necessary to establish a chain of review and custody of required documentation and to ensure the parolee is discharged from parole upon successful completion of the program. The CDCR Form 1502 (Rev. 10/06), Activity Report, which is a multi-purpose form, is referenced as a form used in this process. The CDCR Form 1502 is already established in Title 15, Division 3 regulations (Section 3721.1). Therefore, no copy has been made available for public review.

**Subsection 3800.3(c)** specifies that parolees who fail to successfully complete the program will remain under supervised parole. The subsection also establishes the process by which a parolee may restart the program. If there is no placement available the parolee will not be afforded the opportunity to restart the program. This provision is necessary because the residential care providers are independent contractors and have the right to refuse a parolee with whom they have had problems in the past or who

might create a disruption. A parolee refused by all available providers would be unable to restart in the program.

### **DETERMINATION:**

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons than the action proposed.

### **ASSESSMENTS, MANDATES, AND FISCAL IMPACT:**

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on affected private persons or small business then the action planned.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

The Department, in proposing the adoption of these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

### **PUBLIC HEARING COMMENTS:**

#### **A public hearing was held on December 15, 2010 at 9:00 a.m.**

No comments were received at the hearing.

### **SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS:**

#### **Commenter #1**

**Comment 1A:** Commenter states he is an inmate and will be released soon. Commenter requests a list of treatment facilities in the San Fernando Valley.

**Accommodation:** None

**Response 1A:** Although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or action and must be summarized pursuant to Government Code section 11346.9(a)(3), the comment/objection is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment. The Department can

and will however refer the commenter's information request to the appropriate program for follow-up.

**Commenter #2 et al. (390 co-signers):**

**Comment 2A:** Commenter and co-signers state that serious and violent offenders should be eligible to participate in the Treatment Incentive Program, and that to deny these offenders the ability to participate in the program violates federal laws prohibiting discrimination. Commenter and co-signers state that many serious and violent offenders would like to take advantage of all resources and programs available to assist them in their rehabilitation.

**Accommodation:** None

**Response 2A:** The exclusion of serious and violent offenders from participation in the Treatment Incentive Program is explicit in the enabling statute, specifically Penal Code section 3050(a).

**Comment 2B:** Commenter and co-signers state: "The concerns are about the new adoption under subchapter 6, new sections 3800, 3800.1, 3800.2 and 3800.3 have been made to appear as a sentence structure. When determining who gets treatment or not in regards to non-violent or violent offenders. The legislators intended for the length of incarceration to apply when a sentence is being carried out in an institution. However it seems that it's being applied to parole as well; by implying that a non/violent offender can receive help and get off parole in 150 days. And a serious or violent offender cannot receive parole assistance nor get off parole in 150 days. (When there is know [sic] legislative law that states that). In the Initial Statement of Reasons it is stated that the Department, in proposing the adoption of these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document. However it seems that statistics have been gathered to prove that a non-violent offender is less likely to reoffend and be successful with the right help and resources; and a serious or violent offender will not benefit from the treatment Incentive program. Even though there is nothing to substantiate that claim. Allowing those that are deemed a threat to the community a chance at being exposed to a different way of thinking and behaving, could cut the recidivism rate in half and possibly bring the overcrowding prison system to a reasonable number."

**Accommodation:** None

**Response 2B:** It is not clear what action the commenter and co-signers wish the Department to take regarding the proposed regulations. The comment appears to object further to the exclusion of serious and/or violent offenders from participation in the program, therefore in response, **see Commenter 2, Response 2A above.**

**Comment 2C:** Commenter and co-signers state that the Initial Statement of Reasons explains why certain offenders such as parole violators, civil addicts and inmates convicted of domestic violence-related offenses are excluded from participation in the program, but does not explain why those convicted of serious or violent felonies cannot participate. Therefore, commenter and co-signers state, these offenders should be allowed to participate in the program.

**Accommodation:** None

**Response 2C:** The Initial Statement of Reasons does not provide an in-depth explanation of why serious and violent offenders are excluded from participation in the program because the enabling statute explicitly excludes these offenders, specifically Penal Code section 3050(a).